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Page 1

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H I G H L Y C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
Case No.
In re 12-12020 (MG)

RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

-----x

VOLUME 1

June 6, 2012
10:02 a.m.

Videotaped deposition of SAMUEL M.
GREENE, pursuant to notice, at the
offices of Kramer Levin Naftalis &
Frankel LLP, 1177 Avenue of the Americas,
New York, New York, before Gail F.
Schorr, a Certified Shorthand Reporter,
Certified Realtime Reporter and Notary
Public within and for the State of New
York.

HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 6/6/2012

Page 2

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SAMUEL M. GREENE - 6/6/2012

Page 3

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HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 6/6/2012

Page 4

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2 Nationstar proposes not to acquire the
3 advances, right?

4 A. I think they're purchasing
5 some advances, but not all advances.

6 Q. Which advances are they
7 proposing to purchase? I think I may
8 have missed that.

9 A. In the box on page 2, second
10 from the middle, it says advances.

11 Q. The box (e), private label
12 securitization advances?

13 A. On page 2.

14 Q. Under purchase price for those
15 advances it says NA with an asterisk,
16 right?

17 A. Right.

18 Q. It explains that it's actually
19 proposing to exclude those advances, but
20 to collect them on behalf of the debtors?

21 A. Right, but it says it would
22 purchase them for a certain percentage of
23 par at the end.

24 Q. So I'm clear, the proposal was
25 that rather than purchasing the assets on

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2 day 1, Nationstar would collect the
3 advances on the debtors' behalf for 18
4 months, right?

5 A. Yes.

6 Q. Am I right in understanding
7 that that would be for no charge, the
8 asset collection service, the asset
9 collection?

10 MR. ENGELHARDT: Objection to
11 form.

12 A. I believe so, yes.

13 Q. And then any advances that
14 remained uncollected at the end of 18
15 months Nationstar would undertake to
16 purchase at 95 percent of par?

17 MR. ENGELHARDT: Let him
18 finish the question, please don't
19 refer to the numbers on the
20 document.

21 MR. HOROWITZ: There's going
22 to be a whole line of questioning
23 that I'm going to have to do again
24 in the absence of people. I'll do
25 as much as I can with folks here.

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2 form.

3 A. I would imagine it's really
4 done on a loan-by-loan or PSA-by-PSA
5 basis. They could really be quite
6 different.

7 Q. Depending on the nature of the
8 advance?

9 A. Depending upon the nature of
10 the advance, the quality of the
11 underlying loan, things of that nature.

12 Q. So as you sit here today, you
13 don't have any understanding as to what
14 the debtor expected the time profile of
15 recovery of those advances to be?

16 A. Which advances?

17 Q. The advances that Nationstar
18 was proposing to collect on the debtors'
19 behalf for 18 months?

20 A. No, I said that my
21 recollection was that a very high
22 percentage of them would be collected
23 within 18 months.

24 Q. But within that 18 months,
25 would the majority of them have been

HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 6/6/2012

Page 130

1 SAMUEL M. GREENE - HIGHLY CONFIDENTIAL
2 collected within the first three months,
3 for example?

4 A. That I don't know.

5 Q. Now, you responded to this
6 initial indication of interest with a
7 letter seeking clarification of the bid,
8 right?

9 A. Yes.

10 Q. And among other things, you
11 asked Nationstar to make a proposal to
12 purchase the advances rather than this
13 collection proposal, right?

14 A. Yes, we did.

15 Q. And in the clarification of
16 bid letter that was marked as Greene
17 Exhibit 11, on page 5 under items 9 and
18 10 Nationstar responds to that request
19 separately with regard to the PLS
20 advances and the agency advances, right?

21 A. Yes.

22 Q. The response is essentially
23 the same for both, that Nationstar was
24 prepared to bid what it's actually ending
25 up paying in this deal for those

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2 advances, right?

3 A. Yes.

4 Q. And since that's public I can
5 say it, they're proposing to pay 95 cents
6 on the dollar for these advances, right?

7 A. Yes.

8 Q. But they reiterate their
9 proposal to have the sellers retain the
10 advances, right?

11 A. Hold on, let me just read.
12 They reiterate their offer should we
13 desire to retain them.

14 Q. And they add to that an offer
15 to assist the seller in obtaining
16 financing on the retained advances?

17 A. Correct.

18 Q. And that's an offer to obtain
19 financing on terms that -- well,
20 withdrawn. That's about as much as I can
21 comfortably do publicly.

22 Why did the debtor choose to
23 go with the Nationstar purchase of the
24 advances as opposed to the proposal to
25 collect on the debtors' behalf?

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2 A. I think we thought it was in
3 the best interest of the estate to, you
4 know, bring in the cash as soon as
5 possible so that it could be distributed
6 quickly.

7 I also think that while the
8 seller, while Fortress represented that
9 they anticipate being able to help us, it
10 wasn't a commitment to get that
11 financing, that when you looked at the
12 DIP financing and that was going to be
13 the more likely vehicle that was going to
14 be required here in order to service the
15 advances on a go-forward basis and the
16 pricing of the DIP was materially higher
17 than L plus 350.

18 Q. You said it, not me, I was
19 avoiding that, but that's fine.

20 A. Oh.

21 Q. So their proposal was that
22 they could provide financing on the
23 advances, on that portion of the debtors'
24 collateral on cheaper terms than what was
25 then the DIP proposal, right?

HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 8/6/2012

Page 186

1 SAMUEL M. GREENE - HIGHLY CONFIDENTIAL
2 as a stalking-horse bidder for the
3 Nationstar purchased assets."

4 What is the basis for that
5 opinion?

6 A. The basis for that opinion is
7 we reviewed various break-up fees in
8 Chapter 11 context and there was a range
9 and that this fee was in that range.

10 Q. Did you present any written
11 analysis of break-up fees to the debtors'
12 Board of Directors?

13 A. I believe we did.

14 Q. You say you believe you did.
15 Do you specifically recall presenting
16 one?

17 A. I specifically remember
18 putting together a piece of analysis that
19 demonstrated the range of break-up fees
20 and historical transactions and I believe
21 it was either presented to ResCap
22 management or ResCap, someone at the
23 client.

24 Q. Before we get to that, how was
25 the break-up fee negotiated?

26 Merrill Corporation - New York

HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 6/6/2012

Page 187

1 SAMUEL M. GREENE - HIGHLY CONFIDENTIAL

2 A. Well, it was -- it's not, you
3 know, in any of these situations it's
4 not, you know, we don't serially go
5 through items and knock them off and get
6 to the next one. It was a bunch of
7 negotiations going around and a bunch of
8 things that we wanted and a bunch of
9 things that they wanted and, you know, we
10 settled on 3 percent and, you know,
11 presumably we got things we wanted in
12 other areas.

13 Q. In fact, Nationstar never
14 asked for higher than 3 percent, right?

15 A. No, I don't believe they did.

16 Q. And the debtors originally
17 suggested one percent, right?

18 A. Correct.

19 Q. Was there vigorous negotiation
20 over this?

21 A. Sure. It was brought up a
22 number of times.

23 Q. Was there any discussion about
24 what base -- withdrawn.

25 Was there any discussion about

HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 6/6/2012

Page 188

SAMUEL M. GREENE - HIGHLY CONFIDENTIAL
whether it was reasonable to apply that 3
percent figure to all of the assets that
Nationstar would be purchasing?

A. As opposed to some of the
assets?

Q. Yes.

A. No.

Q. In the Nationstar transaction,
I'm going to get the numbers wrong, but
Nationstar is bidding, what is it, 1.1
billion for the MSRs and platform,
approximately?

A. Yes, I would have to check the
number, but it's in that neighborhood.

Q. And something in the
neighborhood of, I'm going to get it
wrong, so please correct me, 1.6 billion
for the advances?

A. Well the whole bid is 2.3, so.

Q. So 1.2 billion.

A. In that range.

Q. Thank you. When you did an
analysis of precedent transactions, did
you look at how break-up fees are

HIGHLY CONFIDENTIAL
SAMUEL M. GREENE - 6/6/2012

Page 189

1 SAMUEL M. GREENE - HIGHLY CONFIDENTIAL
2 calculated in transactions where a
3 significant percentage of the deal is to
4 acquire cash or cash equivalents?

5 A. I think that was a factor in
6 the analysis that we looked at, but no, I
7 don't think we -- we don't view the
8 advances as cash or cash equivalents.

9 Q. Even though as you told me
10 before, it's not uncommon for purchasers
11 to pay 100 cents on the dollar for
12 advances, right?

13 MR. ENGELHARDT: Objection to
14 form.

15 A. Sometimes they do, sometimes
16 they don't. It depends on the situation.

17 Q. In negotiations did you ever
18 suggest to Nationstar that it would be
19 appropriate to exclude advances from the
20 base the break-up fee was based on?

21 A. No, we simply asked for a
22 lower fee.

23 Q. Did you ever suggest that a
24 lower percentage of the advances would be
25 appropriate?

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2 Q. Which is?

3 A. About 105 or something.

4 Q. Okay. In reaching the opinion
5 that Nationstar's break-up fee is fair,
6 reasonable and necessary to induce
7 Nationstar to serve as a stalking-horse
8 bidder, did you consider whether that
9 size break-up fee will have a chilling
10 effect on competitive bidding?

11 A. Yes.

12 Q. And what did you conclude?

13 A. It will not.

14 Q. What's the basis for that
15 conclusion?

16 A. Again, we looked at precedent
17 transactions and we found that in
18 bankruptcy break-up fees range anywhere
19 from one to 3 percent. We looked at the
20 size of the deal. We looked at the
21 increment that we were looking to bid
22 over the deal, and we didn't think it
23 would be a problem.

24 Q. Of the 2.3 billion,
25 approximately 1.2 billion is purchasing